Shangri-La Hotels (M) Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA-25–144–06 OF 2018
NORDIN HASSAN J
9 NOVEMBER 2018

Civil Procedure — Judicial review — Application for — Industrial Court decided against applicant for implementation of minimum wages — Applicant filed judicial review against decision of Industrial Court — Whether service charge was part of minimum wages — Whether restructuring of minimum wages mandatory — Whether guidelines had force of law — Whether Industrial Court bound by decisions of High Court and Court of Appeal

The present case was judicial review applications against the decisions of the chairman of the Industrial Court on the 30 April 2018. The Industrial Court heard the five cases together and the decision, inter alia, were the following: (a) dismissed the hotels' unilateral implementation of the minimum wages by utilising the service charge of the employees; (b) the hotels paid the minimum wages of RM900 to the employees earning less than RM900 a month with the hotels' monies without recourse to the service charge; and (c) the utilised service charge by the hotels refunded to the employees. The Minimum Wages Order 2012 ('the MWO 2012') came into effect on 1 October 2013 pursuant to s 23 of the National Wages Consultative Council Act 2011 ('the NWCC Act'). Order 4 of the MWO 2012 provided that the minimum wage for an employee in Peninsular Malaysia at RM900 a month whilst RM800 a month for an employee in Sabah, Sarawak and the Federal Territory of Labuan. In light of the requirement of minimum wage under the MWO 2012, the applicant ('the hotel') proposed for an employee drawing a basic salary less than RM900, a portion of the employees' service charge was utilised to top-up the difference between the employee's basic salary and the minimum wage of RM900 ('the top-up structure'). In the current judicial review application, the National Union of Hotel, Bar and Restaurant Workers, Peninsular Malaysia ('the union'), in a meeting with the applicant on 5 September 2013, had rejected the said proposal for the top-up structure as 90% of the service charge belonged to the employees pursuant to article 13 of the collective agreement entered between the hotel and the union. The matter was then referred to the Director General of Industrial Relations by the hotel vide letter dated 5 September 2013 pursuant to s 18(1) of the Industrial Relations Act 1967 ('the IRA 1967'). The union responded and rejected the hotel's proposal for the top-up structure and

A stated that the hotel should use its own fund to pay the difference for employees earning less than RM900. On 1 October 2013, the hotel implemented the said proposal of the top-up structure which was by using the employees' service charge for the employees earning the basic wage less than RM900. As the dispute between the hotel and the union on this issue failed to be resolved, on
B 4 February 2014 the Minister of Human Resources referred the matter to the Industrial Court pursuant to s 20(3) of the IRA 1967. The Industrial Court had ruled in favour of the union and dissatisfied with the said decision, the hotel filed the present judicial review application. The issues needed to be determined were: (i) whether the Industrial Court erred in holding that the
C hotel was not entitled to use the employees service charge to pay the minimum wages of RM900 in order to comply with MWO 2012; and (ii) whether the Industrial Court erred in deciding that the hotel could not unilaterally implement the minimum wages utilising the service charge of the employees in
D light of the NWCC Act, MWO 2012 and article 13 of the collective agreement.

Held, dismissing the judicial review applications by the five hotels with costs of RM2,000 to be paid by each hotel to the union:

E (1) Having considered the meaning of wages, minimum wages as well as the basic wages and the authorities on the same issue, the court found that the service charge was not part of the basic wages or the minimum wages under the MWO 2012. In the circumstances, the employees service charge could not be utilised for payment of the minimum wage under
F MWO 2012 (see paras 42–43).

(2) The collective agreement signed by the parties were binding on the hotel and the union as parties to it and article 13 of the collective agreement clearly stipulated that 90% of the service charge shall be fully distributed
G to all employees. The employees were entitled to the service charge under their contract of service with the hotel. If the service charge was to be utilised to pay the minimum wage, the amount collected in the fund for service charge would be reduced substantially and 90% of the reduced amount would certainly not favourable to the employees as they would
H get a lesser share. With the existence of the collective agreement which bound the parties, it was pertinent that any restructuring of wages must be by way of negotiation in order to avoid any action in breached of the collective agreement and the MWO 2012. When the law required restructuring of wages by way of negotiation and if the union disagree to
I it, the hotel had no legal authority to force the union to accept the restructuring (see paras 46–48 & 51–52).

(3) The guidelines clearly could not override the NWCC Act 2011 and MWO 2012 in particular O 6(b), (c) and (e) of the MWO 2012. The guidelines provided that the restructuring of wages was subject to

negotiation between the hotel and the union. More importantly, the guidelines had nf as decided by the High Court and affirmed by the Court of Appeal in the case of *Shangri-La Hotel (KL) Bhd & Ors v National Wages Consultative Council & Ors* (Originating Summons No 24–74–11 of 2015) (unreported). In the circumstances, the Industrial Court was correct in holding that the hotel could not unilaterally imposed the top-up structure having regard to the NWCC Act, MWO 2012 and the collective agreement (see paras 54–58).

(4) There was no express assertion by the Industrial Court that s 30(4) was inapplicable and should be disregarded. The expression 'lost its relevance' should be read in light of the fact that the hotel had no other choice but to bear the costs in implementing the minimum wages under the MWO 2012 as could be concluded from para 28 of the award. In any event, even if there was an error by the Industrial Court with regard to the application of s 30(4), the present court had the discretion not to allow the prerogative relief as the ultimate decision by the Industrial Court in the present case was correct. In the present case, the Industrial Court was correct in holding that the Industrial Court was bound by the decision of the High Courts and the Court of Appeal based on the doctrine of stare decisis (see paras 61, 63 & 65).

[Bahasa Malaysia summary

Kes ini adalah permohonan kajian semula terhadap keputusan pengerusi Mahkamah Perusahaan pada 30 April 2018. Mahkamah Perusahaan telah mendengar lima kes secara bersama dan keputusan itu, antara lain, adalah seperti berikut: (a) menolak pelaksanaan unilateral hotel-hotel berhubung gaji minimum dengan menggunakan caj perkhidmatan pekerja; (b) hotel-hotel tersebut membayar gaji minimum RM900 kepada pekerja yang berpendapatan kurang daripada RM900 sebulan dengan wang hotel-hotel tersebut tanpa akses kepada caj perkhidmatan; dan (c) caj perkhidmatan yang digunakan oleh hotel-hotel tersebut dikembalikan kepada para pekerja. Perintah Gaji Minimum 2012 ('PGM 2012') mula berkuat kuasa pada 1 Oktober 2013 menurut s 23 Akta Majlis Perundingan Gaji Negara 2011 ('Akta MPGN'). Perintah 4 kepada PGM 2012 memperuntukkan bahawa gaji minimum untuk seorang pekerja di Semenanjung Malaysia adalah RM900 sebulan manakala RM800 sebulan untuk seorang pekerja di Sabah, Sarawak dan Wilayah Persekutuan Labuan. Berdasarkan keperluan gaji minimum di bawah OGM 2012, pemohon ('hotel tersebut') mencadangkan agar pekerja yang mendapat gaji pokok kurang daripada RM900, sebahagian daripada caj perkhidmatan pekerja digunakan untuk menambah perbezaan antara gaji pokok pekerja dan gaji minimum RM900 ('struktur tambahan'). Dalam permohonan kajian semula ini, Kesatuan Kebangasaan Pekerja-Pekerja Hotel, Bar dan Restoran Malaysia ('persatuan itu'), dalam satu mesyuarat dengan pemohon pada 5 September 2013, telah menolak cadangan tersebut untuk

A struktur tambahan itu kerana 90% daripada caj perkhidmatan itu dimiliki oleh pekerja-pekerja menurut artikel 13 perjanjian kolektif yang dimasuki antara hotel tersebut dan persatuan itu. Perkara ini kemudian telah dirujuk kepada Ketua Pengarah Perhubungan Perusahaan oleh hotel tersebut melalui surat bertarikh 5 September 2013 menurut s 18(1) Akta Perhubungan Perusahaan
B 1967 ('APP 1967'). Persatuan itu menjawab dan menolak cadangan hotel itu untuk struktur tambahan itu dan menyatakan bahawa hotel tersebut patut menggunakan dananya sendiri untuk membayar perbezaan bagi pekerja yang berpendapatan kurang daripada RM900. Pada 1 Oktober 2013, hotel tersebut melaksanakan cadangan tersebut berhubung struktur tambahan itu dengn
C menggunakan caj perkhidmatan para pekerja untuk pekerja-pekerja yang berpendapatan gaji pokok kurang daripada RM900. Oleh kerana pertikaian antara hotel tersebut dan persatuan itu berhubung isu ini gagal diselesaikan, pada 4 Februari 2014 Menteri Sumber Manusia merujuk perkara itu kepada Mahkamah Perusahaan menurut s 20(3) APP 1967. Mahkamah Perusahaan
D telah memutuskan menyebelahi persatuan itu dan berasa tidak puas hati dengan keputusan tersebut, hotel tersebut telah memfailkan permohonan semakan kehakiman ini. Isu-isu yang perlu ditentukan adalah: (i) sama ada Mahkamah Perusahaan terkhilaf dalam memutuskan bahawa hotel tersebut tidak berhak menggunakan caj perkhidmatan para pekerja untuk membayar
E gaji minimum RM900 bagi tujuan mematuhi PGM 2012; dan (ii) sama ada Mahkamah Perusahaan terkhilaf kerana memutuskan bahawa hotel tersebut tidak boleh secara unilateral melaksanakan gaji minimum dengan menggunakan caj perkhidmatan para pekerja berdasarkan Akta MPGN, OGM 2012 dan artikel 13 perjanjian kolektif.

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Diputuskan, menolak permohonan-permohonan semakan kehakiman oleh lima hotel dengan kos RM2,000 dibayar oleh setiap hotel kepada persatuan itu:

G (1) Setelah mempertimbangkan maksud gaji, gaji minimum dan juga gaji pokok dan pihak berkuasa berhubung isu sama, mahkamah mendapati bahawa caj perkhidmatan bukan sebahagian daripada gaji pokok atau gaji minimum di bawah OGM 2012. Dalam keadaan berikut, caj perkhidmatan pekerja tidak boleh digunakan untuk bayaran gaji
H minimum di bawah OGM 2012 (lihat perenggan 42–43).

(2) Perjanjian kolektif yang ditandatangani oleh pihak-pihak adalah mengikat ke atas hotel tersebut dan persatuan itu sebagai pihak-pihak kepadanya dan artikel 13 perjanjian kolektif jelas menyatakan bahawa 90% daripada caj perkhidmatan hendaklah diagihkan sepenuhnya
I kepada semua pekerja. Para pekerja berhak kepada caj perkhidmatan itu di bawah kontrak perkhidmatan mereka dengan hotel tersebut. Jika caj perkhidmatan itu digunakan untuk membayar gaji mimimum, jumlah yang dikutip oleh dana itu untuk caj perkhidmatan akan berkurangan secara substantial dan 90% daripada jumlah pengurangan itu pasti tidak

berpihak kepada para pekerja kerana mereka akan mendapat bahagian yang lebih kurang. Dengan kewujudan perjanjian kolektif yang mengikat pihak-pihak itu, ia adalah wajib agar apa-apa gaji yang distruktur semula hendaklah melalui perundingan bagi tujuan mengelakkan apa-apa tindakan yang melanggar perjanjian kolektif itu dan OGM 2012. Apabila undang-undang menghendaki gaji distruktur semula melalui perundingan dan jika persatuan itu tidak bersetuju dengannya, hotel tersebut tidak mempunyai kuasa sah untuk memaksa persatuan itu menerima penstruturan semula itu (lihat perenggan 46–48 & 51–52).

(3) Garis panduan jelas tidak mengatasi Akta MPGN 2011 dan OGM 2012 terutamanya A 6(b), (c) dan (e) OGM 2012. Garis panduan itu memperuntukkan bahawa penstrukturan semula gaji adalah tertakluk kepada perundingan antara hotel tersebut dan persatuan itu. Lebih penting lagi, garis panduan itu tiada kuasa undang-undang sebagaimana diputuskan oleh Mahkamah Tinggi dan disahkan oleh Mahkamah Rayuan dalam kes *Shangri-La Hotel (KL) Bhd & Ors v National Wages Consultative Council & Ors* (Originating Summons No 24–74–11 of 2015) (unreported). Dalam keadaan berikut, Mahkamah Perusahaan adalah betul dalam memutuskan bahawa hotel tersebut tidak boleh secara unilateral mengenakan struktur tambahan berdasarkan Akta MPGN, OGM 2012 dan perjanjian kolektif itu (lihat perenggan 54–58).

(4) Tiada penegasan nyata oleh Mahkamah Perusahaan bahawa s 30(4) adalah tidak terpakai dan tidak patut diambil kira. Ungkapan 'lost its relevance' hendaklah dibaca berdasarkan fakta bahawa hotel tersebut tidak mempunyai pilihan lain tetapi untuk menanggung kos dalam melaksanakan gaji minimum di bawah OGM 2012 sebagaimana disimpukan daripada perenggan 28 award itu. Dalam apa keadaan, jika pun terdapat kesilapan oleh Mahkamah Perusahaan berkaitan permohonan s 30(4), mahkamah ini mempunyai budi bicara untuk tidak membenarkan relief prerogatif kerana keputusan muktamad oleh Mahkamah Perusahaan dalam kes ini adalah betul. Dalam kes ini, Mahkamah Perusahaan adalah betul dalam memutuskan bahawa Mahkamah Perusahaan adalah terikat dengan keputusan Mahkamah Tinggi dan Mahkamah Rayuan berdasarkan doktrin stare decisis (lihat perenggan 61, 63 & 65).]

Notes

For cases on application for judicial review, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5937–5949.

Cases referred to

Abdul Rahman bin Abdullah Munir & Ors v Datuk Bandar Kuala Lumpur & Anor [2008] 6 MLJ 704, CA (refd)

Council of Civil Service Unions and others v Minister for the Civil Service [1984] 3 All ER 935, HL (refd)

Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia (Civil Appeal No W02(A)-1601–09 of 2015) (unreported), CA (refd)

Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia [2017] 9 MLJ 119, HC (refd)

Funk David Paul v Asia General Asset Bhd [2014] 1 MLJ 681, CA (refd)

Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor [1995] 3 MLJ 369, FC (refd)

Leap Modulation Sdn Bhd v Pop Construction Sdn Bhd [2019] 1 MLJ 334, CA (refd)

Lee Fatt Seng v Harper Gilfillan (1980) Sdn Bhd [1988] 1 MLJ 245; [1988] 1 CLJ 270, SC (refd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan tanggungan [1999] 3 MLJ 1, FC (refd)

National Union of Hotel, Bar and Restaurant Workers Peninsular Malaysia v Shangri-La Hotels (Malaysia) Bhd [2017] MLJU 536; [2017] 5 CLJ 513, FC (refd)

PA Pereira & Anor v Hotel Jayapuri Bhd & Anor [1986] 2 MLJ 1; [1987] CLJ Rep 12, PC (refd)

Periasamy s/o Sinappan & Anor v PP [1996] 2 MLJ 557, CA (refd)

R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145, FC (refd)

Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)

Shangri-La Hotel (KL) Bhd & Ors v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia & Ors (Civil Appeal No WA-01(A)-484–12 of 2016) (unreported), CA (refd)

Shangri-La Hotel (KL) Bhd & Ors v National Wages Consultative Council & Ors (Originating Summons No 24–74–11 of 2015) (unreported), HC (refd)

Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317, CA (refd)

Legislation referred to

Employment Act 1955 s 2
Industrial Relations Act 1967 ss 18(1), 20(3), 30(4), (5A)
Minimum Wages Order 2012 O 4, O 6(b), (c), (e)
National Wages Consultative Council Act 2011 ss 2, 23

Rules of Court 2012 O 53 r 3

Firus Hussein Ahmad Jamaluddin (Cheng Mai and Cjoo Shi Jin with him) (Zaid Ibrahim & Co) for the applicant.
Shireen Selvaratnam (Sreenevasan) for the first respondent.
Absent (Attorney General's Chambers) for the second respondent.

Nordin Hassan J:

INTRODUCTION

[1] There are five applications for judicial review before this court which are the following:

(a) Application No WA-25–143–06 of 2018, Golden Sand Resort Sdn Bhd v National Union of Hotel, Bar and Restaurant Workers, Peninsular Malaysia & another;

(b) Application No WA-25-144-06 of 2018, Shangri-La Hotels (M) Bhd v National Union of Hotel, Bar and Restaurant Workers, Peninsular Malaysia & another;

(c) Application No WA-25-145-06 of 2018, Shangri-La Hotels (M) Bhd v National Union of Hotel, Bar and Restaurant Workers, Peninsular Malaysia & another;

(d) Application No WA-25-146-06 of 2018, Komtar Hotel Sdn Bhd v National Union of Hotel, Bar and Restaurant Workers, Peninsular Malaysia & another; and

(e) Application No WA-25-147-06 of 2018, Tanjung Aru Hotel Sdn Bhd v National Union of Hotel, Bar and Restaurant Workers, Peninsular Malaysia & another.

[2] These judicial review applications are against the decisions of the Chairman of the Industrial Court handed down on the 30 April 2018. The Industrial Court heard the five cases together and the decision, inter alia, are the following:

(a) dismisses the hotels' unilateral implementation of the minimum wages by utilising the service charge of the employees;

(b) the hotels to pay the minimum wages of RM900 to the employees earning less that RM900 a month with the hotels' monies without recourse to the service charge; and

(c) the utilised service charge by the hotels to be refunded to the employees.

[3] All parties in these applications for judicial review has agreed that the

A decision of this court for the Application No 25–144–06 of 2018 will bind the other four judicial review applications abovementioned as the issues and the subject matter are the same.

B **[4]** The reliefs sought in the judicial review applications amongst others are as follows:

(a) an order of certiorari to quash the decision of the Industrial Court dated 30 April 2018;

C (b) an order of mandamus for the matters to be remitted back to the Industrial Court to be heard before a different panel; and

(c) a declaration that the hotels are entitled to restructure wages by converting part of the service charge meant for distribution to the employee to form part of the minimum wage ('top-up structure').

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BACKGROUND FACTS

[5] The Minimum Wages Order 2012 ('the MWO 2012') came into effect on 1 October 2013 pursuant to s 23 of the National Wages Consultative E Council Act 2011 ('the NWCC Act 2011'). Order 4 of the MWO 2012 provides that the minimum wage for an employee in Peninsular Malaysia at RM900 a month whilst RM800 a month for an employee in Sabah, Sarawak and the Federal Territory of Labuan.

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[6] In light of this requirement of minimum wage under the MWO 2012, the applicant ('the hotel') proposed for an employee drawing a basic salary less than RM900, a portion of the employees' service charge to be utilised to top-up the difference between the employee's basic salary and the minimum wage of G RM900 ('top-up structure').

[7] In this judicial review application, the National Union of Hotel, Bar and Restaurant Workers, Peninsular Malaysia ('the union'), in a meeting with the applicant on 5 September 2013, has rejected the said proposal for the top-up H structure as 90% of the service charge belongs to the employees pursuant to article 13 of the collective agreement entered between the hotel and the union.

[8] The matter was then referred to the Director General of Industrial Relations by the hotel vide letter dated 5 September 2013 pursuant to I sub-s 18(1) of the Industrial Relations Act 1967 ('the IRA 1967').

[9] By letter dated 6 September 2013, the union responded and rejected the hotel's proposal for the top-up structure and states that the hotel should use its own fund to pay the difference for employees earning less than RM900.

[10] Nevertheless, on 1 October 2013, the hotel implemented the said proposal of top-up structure which is by using the employees' service charge for the employees earning the basic wage less than RM900.

[11] As the dispute between the hotel and the union on this issue failed to be resolved, on 4 February 2014 the Minister of Human Resources has referred the matter to the Industrial Court pursuant to sub-s 20(3) of the IRA 1967.

[12] The Industrial Court, on 30 April 2018 has ruled in favour of the union and dissatisfied with the said decision, the hotel filed this judicial review application.

GROUNDS FOR THE JUDICIAL REVIEW

[13] Based on the hotel's statements under O 53 r 3 of the Rules of Court 2012 and submission made in court, the grounds for the judicial review, inter alia, are the following:

(a) the Industrial Court has committed an error of law in holding that the hotel was not entitled to implement the top-up structure as the union had not consented to it;

(b) the Industrial Court erred in fact and in law in holding that sub-s 30(4) of the IRA 1967 is not relevant in making a decision on the issue of payment of minimum wages; and

(c) the Industrial Court has failed to take into account all relevant factors and instead took into consideration of irrelevant factors.

(d) the Industrial Court erred in fact and in law in holding that as the guidelines issued by the National Wages Consultative Council had no force of law, the Industrial Court has no justification to take judicial notice of the same on the basis of public policy and/or sub-s 30(5A) of the IRA 1967.

THE UNION'S SUBMISSION

[14] At the outset, counsel for the union submits that the hotel is barred by res judicata from proceeding with this judicial review application as similar issue has been raised by the same five hotels and was dismissed by the High Court in Originating Summons No 27–74–11 of 2015. The decision was upheld by the Court of Appeal and leave to appeal was denied by the Federal Court.

[15] In the said originating summons, one of the declaration sought by the hotels is that the hotels are entitled to convert all or part of the service charge

meant for distribution to the employees to form part of the minimum wage for the purpose of the implementation of the MWO 2012.

[16] It was argued that the declaration the hotel seeks in the present judicial review application is almost identical to the declaration sought in the said originating summons which is the following:

> ... a declaration that the Applicant is entitled to restructure wages by converting part of the service charge meant for distribution of the employee to form part of the minimum wage ('Top-up Structure') to comply with the Minimum Wages Order 2012 and a declaration that the Applicant's implementation of the top-up structure is lawful and valid as from 1.10.2013.

[17] Nonetheless, the union contends that the decision of the Industrial Court in dismissing the hotel's proposal to utilise the service charge to pay the employees minimum wage is correct and consistent with High Court and Court of Appeal's decision on this issue.

[18] Counsel for the union further submits that sub-s 30(4) of the IRA 1967 is not relevant in relation to the implementation of minimum wages as minimum wage is cost of business which the hotel has to bear. As such, the financial impact to the hotel is not a relevant consideration.

DECISION OF THIS COURT

[19] It is well settled principles of law of judicial review that the court not only may review the decision making process but also the decision itself with regard to its merit.

[20] In this regard, it is instructive to make reference to the Federal Court case of *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629, which states:

> Historically, judicial review was only concerned with the decision making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years our courts have made inroad info this field of administrative law. *Rama Chandran* is the mother of all those cases. The Federal Court in a landmark decision has held that the decision of inferior tribunal may be reviewed on the grounds of 'illegality', 'irrationality' and possibility 'proportionality' which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go info the merit of the matter. Thus, the distinction between review and appeal no longer holds.
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> (see also *Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors* [2014] 4 MLJ 765).

[21] The landmark case of *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 quoted the elaboration by Lord Diplock in *Council of Civil Service Unions and others v Minister for the Civil Service* [1984] 3 All ER 935 with regard to the definition of illegality, irrationality and procedure impropriety as follows:

> In this context, it is useful to note how Lord Diplock (at pp 410–411) defined the three grounds of review, to wit, (i) illegality, (ii) irrationality, and (iii) procedural impropriety. This is how he put it:
>
> > By 'illegality' as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or nof is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.
> >
> > By 'irrationality', I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v Bairstow* [1956] AC 14, or irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decision maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.
> >
> > I have described the third head as procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decisions. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that the expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.
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> Lord Diplock also mentioned 'proportionality' as a possible fourth ground of review which called for development.

[22] Illegality includes an error of law and subject to judicial review as explained by the Federal Court in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan tanggungan* [1999] 3 MLJ 1 where is states:

> In our view, therefore, unless there are special circumstances governing a particular case, notwithstanding a privative clause, of the 'not to be challenged, etc' kind, judicial review will lie to impeach all errors of law made by an administrative body

A or tribunal and, we would add, inferior courts. In the words of Lord Denning in *Pearlman v Harrow School* (ibid) at p 70, '... no court or tribunal has any jurisdiction to make an error of law on which the decision in the case depends. If it makes such an error, it goes outside its jurisdiction and certiorari will lie to correct it'.

B **[23]** The meaning or error of law has also been explained in the case of *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317, in the following words:

C It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed. But it may be said that an error of law would be disclosed if the decision-maker asks himself the wrong question or takes into account irrelevant considerations or omits to take into account relevant considerations (what may be conveniently termed an Anisminic error) or if he misconstrues the terms of any relevant statute, or misapplies or misstates a principle of the general law.

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[24] Further, the test applicable in judicial review is the objective test as explained by the Federal Court in *Titular Roman*'s case.

E PRELIMINARY ISSUE — RES JUDICATA/ESTOPPEL

[25] Before I proceed with the merits of the judicial review application, it is pertinent to first deal with the issue of res judicata and estoppels as raised by the union in this application.

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[26] As mentioned earlier, in judicial review, the court will analysed the decision making process as well as the merits of the said decision. The scope in judicial review, as such, is wide. Any grounds alluded to in abovementioned cases for judicial review may result the decision made to be quashed.

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[27] As also stated earlier, the present judicial review application is on the basis of error of law, failure to take into account relevant factors and taking into account irrelevant factors. In the circumstances, I find, the principle of res judicafa and estoppels as argued by counsel for the union, has no application in the present case.

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[28] In the Court of Appeal case of *Abdul Rahman bin Abdullah Munir & Ors v Datuk Bandar Kuala Lumpur & Anor* [2008] 6 MLJ 704, it states that a flexible approach is preferred when the doctrine of res judicata and estoppels is raised in the judicial review application.

I

[29] In the same case, Abdull Hamid Embong JCA had this to say:

[25] From these pronouncements and dicta of high authority, it would seem that a

flexible approach viewed against the facts of each case, would be preferred when the doctrine is raised as a bar in a judicial review situation. In judicial review, there is always a party who is not present: the wider public or public interest (see *Halsbury's Laws of England*, (4th Ed), Reissue para 983).

The judge further said this:

[33] After considering these factors we feel that this application was made on account of public law rights and interests and could not see in it any abuse of the court's process. This doctrine ought only to be applied to instances where the facts are such that abuse of process has obviously occurred; otherwise there is a 'danger of a party being shut out from bringing forward a genuine subject of litigation' (see *Brisbane City Council v Attorney-General for Queensland* [1978] 3 All ER 30).

[34] We feel that the overriding objective of justice does not allow a rigid application of the doctrine in this instance. We would conclude that there are special circumstances here to disallow the operation of the doctrine (see *Arnold*'s case).

[30] Likewise in the present application, I find there are special circumstances, as mentioned earlier, to conclude that the doctrine of res judicata and estoppel is not applicable in the present case.

[31] Reverting to the merits of the present judicial review application, the main issues are as follows:

(a) whether the Industrial Court erred in holding that the hotel is not entitled to use the employees service charge to pay the minimum wages of RM900 in order to comply with MWO; and

(b) whether the Industrial Court erred in deciding that the hotel cannot unilaterally implement the minimum wages utilising the service charge of the employees in light of the NWCC Act, MWO 2012 and article 13 of the collective agreement.

Issue (i): Whether the Industrial Court erred in holding that the hotel is not entitled to use the employees' service charge to pay the minimum wages of RM900 in order to comply with MWO 2012

[32] On this issue, it is useful here to understand the nature of the employees' service charge. The hotel imposes services charges of 10% on bills and receipts which was introduced to replace tipping. The service charge is placed in a separate fund and will be distributed amongst the employees in accordance with the service charge point allocation pursuant to the collective agreement. In the collective agreement, it also provides that 90% of the service charge collected will be distributed amongst the employees and 10% to be retained by

hotel for administrative costs. This service charges which replace tipping has ensure that all employees receive a share compared with tipping which was only enjoys by the front line employees.

[33] The core issue is whether the hotel is entitled to use their employees' service charge to pay the minimum wage.

[34] In this regard, it is pertinent to examine the relevant provisions of the MWO 2012 which was put in placed pursuant to s 23 of the National Wages Consultative Council Act 2011 ('the NWCC Act 2011').

[35] Paragraph 4 of the MWO 2012 provides that the minimum wage for employees in Peninsular Malaysia is RM900 a month and for Sabah, Sarawak and Federal Territory of Labuan at RM800 a month. It states as follows:

> M4. The minimum wages rates payable to an employee shall be as follows:inimum wages rates

Regional areas	Minimum wages rates	
	Monthly	Hourly
Peninsular Malaysia	RM900	RM4.33
Sabah, Sarawak and the Federal Territory of Labuan	RM800	RM3.85

[36] In connection with this issue of minimum wage, s 2 of the Employment Act 1955 has defined wages as follows:

> 'wages' means basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service but does not include —
>
> (a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;
>
> (b) any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme retrenchment, termination, law-off or retirement scheme thrift scheme or any other fund or scheme established for the benefit or welfare of the employee;
>
> (c) any travelling allowance or the value of any travelling concession;
>
> (d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;
>
> (e) any gratuity payable on discharge or retirement; or
>
> (f) any annual bonus or any part of any annual bonus.

[37] Section 2 of the NWCC Act 2011 defined wages and minimum wages as follows: A

(a) wages has the same meaning assigned to it in s 2 of the Employment Act 1955; and

(b) minimum wages means the basic wages to be or as determined under s 23. B

[38] Further s 23 of the NWCC Act 2011 states:

> 23 (1) Where the Government agrees with the recommendation of the Council under paragraph 22(2)(a) or 22(4)(a) or determines the matters under paragraph 22(4)(b), the Minister shall, by notification in the Gazette, make a minimum wages order on the matter specified in paragraphs 22(1)(a) to (e) as agreed to or determined by the Government. C
>
> (2) The Minister may, upon the direction of the Government, by notification in the Gazette, amend or revoke the minimum wages order. D

[39] The definition of wages under s 2 of the Employment Act 1955 was further explained by the Supreme Court in the case of *Lee Fatt Seng v Harper Gilfillan (1980) Sdn Bhd* [1988] 1 MLJ 245; [1988] 1 CLJ 270 in the following words: E

> It seems that the work done in the definition of wages are used so as to stress on the requirement that the remuneration must be for work done in respect of the contract of service of the employee concerned, so that any payment made to him by the employer not for work done or to be done and not in connection with the contract of service, in not part of the wages. F

[40] On the same point, the Court of Appeal in the case of *Funk David Paul v Asia General Asset Bhd* [2014] 1 MLJ 681 held as follows: G

> ... Wages in our view is a term referring to payments for service or works rendered on a regular basis; hence we have the terms or sayings 'my weekly or monthly wages' in ordinary parlance. This meaning would explain the exclusion of (a) service charge (b) overtime payment (c) gratuity or (d) retirement benefits from the definition of wages in s 2 Wages is but one species of remuneration. H

[41] In *Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia* [2017] 9 MLJ 119 which decision has been affirmed by the Court of Appeal said this: I

> [35] What amounts to the 'basic wages' had been illustrated in the case of *Decor Wood Industries (Terengganu) Sdn Bhd v Timber Employees Union* [1990]1 ILR 423 as:

A *... does not include additional emoluments which some workmen may earn on the basis of a system of bonus related to production. Nor does it include any other supplements and allowances, such as housing and cost of living which is not directly related to the work in that category*.

B [36] From the above, it would appear that the concept of 'basic wages' under the NWCC does not include any other additional components. This concept had been illustrated in OP Malhotra's 'The law of Industrial Disputes' at page 84 (supra) as follows:

C The phrase 'basic wage' is also ordinarily understood to mean that part of the price of labour, which the employer must pay to all workmen, belonging to all categories. The phrase is used ordinary, in contradistinction to allowance — the quantum of which may vary in different contingencies. *The 'basic wage', therefore does not include additional emoluments, which some workmen may earn on the basis of a system of bonuses, related to production.* The quantum of the earnings from such bonuses, varies from individual, to individual according to efficiency and diligence; it will vary sometimes from season to season with the variation in the working conditions in the establishment; it will also vary with variations in the rate of supply of raw materials or with assistance obtainable from machine. This element of variation excludes the additional emoluments from connotation of the 'basis wage'. (Emphasis added.)

D

E

[42] Having considered the meaning of wages, minimum wages as well as the basic wages alluded to earlier and the authorities on the same issue, I find, the service charge is not part of the basic wages or the minimum wages under
F the MWO 2012.

[43] In the circumstances, the employees service charge cannot be utilised for payment of the minimum wage under MWO 2012.

G *Issue (ii): Whether the Industrial Court erred in deciding that the hotel cannot unilaterally implement the minimum wages utilising the service charge of the employees in light of the NWCC Act, MWO 2012 and article 13 of the collective agreement*

H **[44]** In regard to this issue, the hotel and the union has entered into a collective agreement whereby the provision or service charge is stipulated under article 13 which, inter alia, provides:

ARTICLE 13 — SERVICE CHARGE

I 13.1 The Hotel shall retain 10% of the 100% service charge imposed monthly and the remaining 90% ('total distributable service charge') shall be fully distributed to all employees covered within the scope of this Agreement as per Appendix C in the following manner:

(a) 90% of the total distributable service charge shall be distributed to all employees listed in Appendix C to this Agreement according to their point allocation; and

(b) 10% of the total distributable service charge shall be distributed equally amongst all employees listed in Appendix C to this Agreement.

[45] The same provisions for service charge are also stated in the collective agreement between the other four hotels and the union.

[46] This collective agreement binds the hotel and the union as parties to it and article 13 of the collective agreement between Shangri-La Hotel and the union clearly stipulates that 90% of the service sharge shall be fully distributed to all employees. This provision is amongst the incentive that attract employees to work in hotel industry.

[47] In addition, employees are entitled to the service charge under their contract of service with the hotel as explained by the Privy Council in *PA Pereira & Anor v Hotel Jayapuri Bhd & Anor* [1986] 2 MLJ 1; [1987] CLJ Rep 12 in the following words of Lord Mackay of Clashfern:

> The learned judge and the Federal Court concluded that Mr Pereira's share of the service charge was not 'wages' within the meaning of the Act. The reason which led them to this conclusion was that, as the Board and the hotel company have argued here, the service charge is money collected from the customers for distribution according to the points system and therefore, so ran the reasoning, was never the hotel company's money but was money paid by the customers for the employees and passed to them through the hotel company. Even if this be a correct analysis of the position, *it is plain that Mr Pereira's entitlement to his share of the service charge collected by the hotel company arises under his contract of service with the hotel company and therefore, even if the hotel company in terms of that contract is acting as his agent to collect for him and the other employees from the hotel's customers, the service charges which they pay to the hotel company, that money is due to them by the hotel company under their contracts of service as a reward for the service which the employees render under their contracts of service to the hotel company itself.* Accordingly, the share of service charge is properly to be regarded as due to Mr Pereira under his contract of service as remuneration and for the reasons already it is in respect of the normal periods of work. That money, once in the hands of the hotel company, is due by them as employer to Mr Pereira in tems of his contract of employment and the provisions of the Act entitling the employer to relief from the employee for the employee's share of the contribution under the Act, entitles the hotel company to deduct that contribution, not only from the basic salary, but also from the money due under his contract to Mr Pereira in respect of his share of the collected service charge. Their Lordships are therefore of the view that the reasoning of both the Federal Court and the learned judge, with great respect, does not negative the conclusion which has been already stated.

[48] Furthermore, if the service charge is to be utilised to pay the minimum wage, the amount collected in the fund for service charge will be reduced substantially and 90% of the reduced amount would certainly not favourable to the employees as they will be getting a lesser share. Worst if after the hotel has utilised all the service charge, there is nothing left in the said fund to be distributed to the employees.

[49] To utilised the service charge which entails unfavourable result to the employees is also in breached of O 6(b), (c) and (e) of the MWO 2012 which stipulates:

> 6 Negotiation for restructuring of wages
>
> Nothing in this order shall be construed as preventing the employer and the employee, or the trade union as the case may be, from negotiating on the restructuring of wages under section 7B of the Employment Act 1955, section 9B of the Sabah Labour Ordinance or section 10B of the Sarawak Labour Ordinance, as the case may be, before this Order comes into operation in relation to the employer concerned provided that —
>
> (a) the restructured basic wages to be paid to the employee shall be in accordance with the minimum wages rates specified in this Order;
>
> (b) the restructured wages shall not be less favourable that the employee's existing wages;
>
> (c) the restructured wages shall not be less that the amount of wages earned by the employee as agreed in the contract of service before the restructuring of the wages;
>
> (d) the restructuring of the wages shall only involve the payment for work done during the normal hours of work of the employee; and
>
> (e) the restructuring of the wages shall not cause the employee to lose any remuneration specified under paragraph (a) to (f) of the definition of 'wages' in section 2 of the Employment Act 1955, section 2 of the Sabah labour Ordinance and section 2 of the Sarawak Labour Ordinance which the employee would be entitled to under the contract of service.

[50] The employees getting lesser share if the service charge is utilised for payment of the minimum wage has also been decided in the case of *Crystal Crown Hotel* which, as mentioned earlier, has been upheld by the Court of Appeal.

[51] Here, I find, with the existence of the collective agreement which binds the parties, it is pertinent that any restructuring of wages must be by way of negotiation in order to avoid any action in breached of the collective agreement and the MWO 2012.

[52] Here, when the law requires restructuring of wages by way of negotiation and if the union disagree to it, the hotel has no legal authority to force the union to accept the restructuring.

[53] On the same issue, the Federal Court in the case of *National Union of Hotel, Bar and Restaurant Workers Peninsular Malaysia v Shangri-La Hotels (Malaysia) Bhd* [2017] MLJU 536; [2017] 5 CLJ 513 Richard Malanjum CJ (Sabah and Sarawak) (as he then was) said this:

> [30] the IRA 1967 also provides the process to be followed in coming up with a collective agreement which is defined as 'an agreement in writing concluded between an employer or a trade union of employer onthe one hand and a trade union of workmen on the other relating to the terms and conditions of employment, and work of workmen or concerning relations between such parties'. Basically, the parties are required to negotiate and upon concluding an agreement it is necessary to secure cognisance from the Industrial Court as provided for under s 17. *There is no provision that allows for unilateral imposition of terms and conditions of employment by an employer by an employer or a trade union of employers upon members represented by a trade union of workmen.*
>
> [31] *It is therefore obvious that the answer to the leave question must be in the negative.*
>
> [32] *Reverting to the present case, the respondent would have therefore no power to impose unilateral terms and conditions of employment on the employees represented by the appellant if there still exists a valid collective agreement between the parties.* (Emphasis added.)

[54] Next, the hotel reliance on para 3(v) of the Guidelines On The Implementation of Minimum Wages Order 2012 to support its contention that the hotel has the power to implement the top-up structure is misconceived.

[55] This guidelines clearly cannot override the NWCC Act 2011 and MWO 2012 in particular O 6(b), (c) and (e) of MWO 2012 as alluded to earlier.

[56] The guidelines also provides that the restructuring of wages is subject to negotiation between the hotel and the union as it states:

> Subject to negotiation *between the employer and employee, the method of restructuring of wages is based on the following conditions:*
>
> ...
>
> (v) for the hotel sector where service charge collection is implemented, the employer may convert all of part of the service charge meant for distribution to the employee, to form part of the minimum wages;

[57] More importantly, the guidelines has no force of law as decided by the High Court and affirmed by the Court of Appeal in the case of *Shangri-La Hotel (KL) Bhd & Ors v National Wages Consultative Council & Ors* (Originating Summons No 24–74–11 of 2015) (unreported).

[58] In the circumstances, the Industrial Court is correct in holding that the hotel cannot unilaterally imposed the top-up structure having regard to the NWCC Act, MWO 2012 and the collective agreement.

[59] The next issue is the application of sub-s 30(4) of the IRA 1967 which reads:

> In making its award in respect of a trade dispute, the Court shall have regard to the public interest, the financial implications and the effect of the award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries.

[60] The hotel submits that the Industrial Court has failed to apply this mandatory provision which in the present case includes the financial implication to the hotel. At para 27 of the award of the Industrial Court states as follows:

> ... It was contended that the circumstances and the Guidelines relied upon by the hotels are without basis and that if the hotels are unable to pay the minimum wages, they have no right to exist. Therefore, the provision under s 30(4) of the IRA has lost its relevance when it comes to making a decision of the issue of the payment of minimum wages, *a submission point which this court readly agreed.*

[61] Here, upon contention made by the union that the provision of sub-s 30(4) has lost its relevance, the Chairman of the Industrial Court agrees with it. There is no express assertion by the Industrial Court that sub-s 30(4) is inapplicable and should be disregarded. I am the view, that the expression 'lost its relevance' should be read in light of the fact that the hotel has no other choice but to bear the costs in implementing the minimum wages under the MWO 2012 as can be concluded from para 28 of the award.

[62] In fact at para 28 of the award, the Industrial Court has gave due regard to the financial implication to the hotel when it states:

> [28] it was the union's case that profit and loss account has no relevancy with regard to the payment of minimum wages. The unions submitted that even *COW3 admitted that whether the hotels made a profit or had incurred a loss, they must still pay the minimum wages. COW3 further agreed that financial capability was irrelevant in the issue of minimum wages. Moreover, the 90% service charge was no an income or revenue of the hotels.* COW3 had testified that basic salary was distinct from service charge. Consequently, the union submitted that distinctly, service charge could

never be included into the basic salary to form the minimum wages. *COW3 had agreed that there were two sources of funds being paid*, that of service charge by the hotels' guests and basic salary being paid by the hotel.

[63] In any event, even if there is an error by the Industrial Court with regard to the application of sub-s 30(4), this court has the discretion not to allow the prerogative relief as the ultimate decision by the Industrial Court in this case is correct. This has been explained by the Federal Court in the case of *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1995] 3 MLJ 369, which states:

> ... In any event, assuming for a moment that the Industrial Court had given wrong reasons for holding that the appellant is a workman within the Act — and we hasten to repeat that this is not the case here — its ultimate decision being correct, prerogative relief whether in the form of certiorari of prohibition ought to have been withheld from the respondent. For, it must not be forgotten that these remedies are discretionary and are not available ex debito justitiae to an applicant who is able to demonstrate an error of law on the part of a public decision-maker.
>
> ... Although the reasons given in the order of the Minister may be erroneous yet if the order can be supported on other valid grounds, writ of certiorari to quash that order cannot be granted.

[64] I also must not lose sight of the fact that there are two Court of Appeal's decision which upheld the decision of the High Court which decided, inter alia, that the hotel cannot utilised the employees service charge to make up the minimum wage pursuant to MWO 2012. The cases are the following:

(a) *Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia* (Civil Appeal No W02(A)-1601–09 of 2015) (unreported); and

(b) *Shangri-La Hotel (KL) Bhd & Ors v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia & Ors* (Civil Appeal No WA-01(A)-484–12 of 2016) (unreported).

[65] In the present case, the Industrial Court is correct in holding that the Industrial Court is bound by the decision of the High Courts and the Court of Appeal based on the doctrine of stare decisis. This court also is bound by the decisions of the Court of Appeals.

[66] As regards the doctrine of stare decisive, it is apt to make reference to the Court of Appeal case of *Periasamy s/o Sinappan & Anor v Public Prosecutor* [1996] 2 MLJ 557 where it states:

> We may add that it does not augur well for judicial discipline when a High Court

judge treats the decision of the Supreme Court with little oe no respect in disobedience to the well entrenched doctrine of stare decisis. We trust that the occasion will never arise against when we have to remind High Court judges that they are bound by all judgment of this court and of the Federal Court and they must, despite any misgiving a judge may entertain as to the correctness of a particular judgment of either court, apply the law as stated therein.

[67] Likewise in the Court of Appeal case of *Leap Modulation Sdn Bhd v Pop Construction Sdn Bhd* [2019] 1 MLJ 334, where David Wong JCA said this:

> [29] There is no two ways about it here. The concept of stare decisis is applicable to the case at hand as the factual matrix there in our view is the same as here and could not be distinguished in anyway. We are thus bound by it.
>
> [31] Finally, we reiterate that the importance of the doctrine of stare decisis must not be overlooked. As Benjamin Cardozo in this treatise. The Nature of Judicial Process (New Haven and London: Yale University Press [1021] at page 9-50, says:
>
> > it will not do to decide the same questions one way between one set oflitigants and the opposite way between another, 'If a group of cases involves the same point, the parties expect the same decision. It would be a gross injuctice to decide altermate cases on opposite principles. If a case was decided against me yesterday when I was a defendant, I shall look at the same judgment today if I am plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights. 'Adherence to precedent must then be the rule rather than an exception if litigants are to have faith in the even-handed administration of justice in the Court'.

CONCLUSION

[68] Based on the aforesaid reasons, I find, the decision of the Industrial Court dated 30 April 2018 is not tainted with any illegality, irrationality unreasonableness or procedure impropriety that warrants curial intervention by this court.

[69] In the circumstances, the judicial review applications by the five hotels are dismissed with cost of RM2,000 to be paid by each hotel to the union.

Judicial review application by the five hotels dismissed with costs of RM2,000 to be paid by each hotel to the union.

Reported by Mohd Kamarul Anwar